

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GREATER ST. LOUIS CONSTRUCTION)	
LABORERS WELFARE FUND, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 4:09CV00401 ERW
)	
SYMMETRY DESIGN and INSTALLATION,)	
LLC,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant Symmetry Design and Installation, LLC's ("Symmetry") "Motion to Withdraw Appearance as Attorney for Defendant" [ECF No. 86].

I. BACKGROUND

Plaintiffs brought this action against Symmetry, under the Employee Retirement Income Security Act and the Labor Management Relations Act, to collect delinquent fringe benefit contributions due under various collective bargaining agreements [ECF Nos. 27, 79]. On March 29, 2012, this Court entered judgment in favor of Plaintiffs and against Symmetry, awarding Plaintiffs a total of \$35,317.80 in delinquent contributions, liquidated damages, interest, costs, and attorneys' fees [ECF Nos. 79, 80]. To date, the entire amount of the judgment remains outstanding [ECF Nos. 82, 82-1].

On June 25, 2012, Counsel for Plaintiffs served a Notice of Rule 69 Deposition on Symmetry's principal, Theodore Bergman, contemporaneously with a Request for Production of Documents to be produced at the deposition [ECF Nos. 82-1, 82-2]. Mr. Bergman appeared with counsel at the deposition, and produced some of the requested documents [ECF No. 82-1].

However, he did not produce any tax returns for Symmetry, and no other person acting on Symmetry's behalf has produced tax returns since the deposition [ECF No. 82-1].

Plaintiffs sent their First Set of Post-Judgment Interrogatories to Symmetry, requiring an answer, under oath, within thirty (30) days of their January 18, 2013 submission [ECF Nos. 82-1, 82-3]. On June 24, 2013, Plaintiffs filed their "Motion to Compel Responses to Post-Judgment Discovery Requests," moving the Court to compel Symmetry to respond to Plaintiffs' First Set of Post-Judgment Interrogatories and Requests for Production of Documents [ECF No. 81].

In its Response, Symmetry stated it had been out of business for over two-and-one-half (2 ½) years [ECF No. 83]. Among other things, Symmetry stated that it has no employees, no funds, and no assets with which to employ persons to answer interrogatories, and that its Chief Financial Officer works for another company. Plaintiffs filed a "Response Memorandum in Support of Plaintiffs' Motion to Compel Discovery Responses" [ECF No. 84].

On July 17, 2013, Counsel for Symmetry filed its Motion to Withdraw, asserting they had completed the assignment for which they were engaged, did not agree to handle post-trial collection matters, and no longer had Symmetry as a client [ECF No. 86].

The parties appeared before the Court for hearing on the two motions on July 18, 2013 [ECF No. 87]. The Court granted Plaintiffs' Motion to Compel, directing Plaintiffs to submit no more than ten (10) interrogatories and five (5) requests for production to Symmetry within ten (10) days, and directing Symmetry to respond within twenty (20) days of submission. Counsel's Motion to Withdraw was held in abeyance. Plaintiffs filed a Status Report on September 6, 2013 [ECF No. 89]. In this report, Plaintiffs stated that Symmetry failed to respond timely to Second Post-Judgment Interrogatories and Second Post-Judgment Requests for Production sent to Symmetry on July 27, 2013, indicating Symmetry's responses were, even after application of

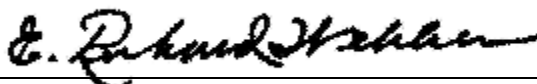
Rule 6(d)'s three-day extension for service made via U.S. Mail, one day late. Plaintiffs further stated Symmetry failed to produce all documents requested, including certain tax records and bank statements.

Nevertheless, Plaintiffs indicated a willingness to continue their investigation of the evidence necessary to support a motion for a creditor's bill in equity, without further court-ordered relief. Consequently, the Motion to Withdraw filed by counsel for Symmetry was held in abeyance, pending notice that the instant discovery issues had been informally resolved. Subsequently, Plaintiffs have submitted "Plaintiffs' Status Report of January 24, 2014," reporting that Symmetry had submitted additional discovery responses, which Plaintiffs had reviewed, and Plaintiffs are continuing to investigate leads for possible recovery of the judgment [ECF No. 92]. In the Status Report, Plaintiffs state they do not oppose the "Motion to Withdraw Appearance as Attorney for Defendant."

Accordingly,

IT IS HEREBY ORDERED that and Defendant Symmetry Design and Installation, LLC's "Motion to Withdraw Appearance as Attorney for Defendant" [ECF No. 86] is **GRANTED**.

Dated this 3rd day of February, 2014.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE